

STORAGE NAME: h1339.wrm

DATE: March 23, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1339

RELATING TO: Water Policy

SPONSOR(S): Representative(s) Goode and Horan

STATUTE(S) AFFECTED: Amends sections 367.081, 373.016, 373.019, 373.036, 373.046, 373.536, 186.007, 186.009, 373.103, 373.114, 373.418, 373.456, 403.031, and 403.0891, F.S. Creates sections 373.0361 and 373.038, F.S. Repeals sections 373.026(10), 373.039, and 403.061(33), F.S.

COMPANION BILL(S): SB 1388 (s), HB 715 (c), HB 1321 (c), SB 1428 (c) and SB 1562 (c).

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) WATER & RESOURCE MANAGEMENT
- (2) UTILITIES & TELECOMMUNICATIONS
- (3) GENERAL GOVERNMENT (FISCAL)
- (4)
- (5)

I. SUMMARY:

HB 1339 strengthens the linkages between state and water management district (WMD) planning for water resource and water supply development activities. It clarifies that the WMDs are responsible for water resource planning and development, and that cities, counties, other governmental entities and utilities are responsible for water supply development. However, nothing precludes the groups from working together to develop water resource and water supply projects, under HB 1339.

Additionally, HB 1339 directs the WMDs to include in their budgets funding for water resource development, and authorizes the Governor and his staff to analyze whether such funding is adequate.

Finally, HB 1339 directs the Florida Public Service Commission (PSC) to allow the water and wastewater utilities it regulates to recover, over a reasonable time-frame, their costs in complying with environmental requirements or permits. The bill also provides statutory authority for the PSC to set conservation rates.

The long-term fiscal impact of HB 1339 is indeterminate.

HB 1339 takes effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The 1972 Florida Water Resources Act assigned planning a key role in managing the state's water resources and required adoption of a comprehensive plan for the development and use of the state's water resources - the State Water Use Plan. The Department of Environmental Protection (DEP) has undertaken development of the plan on three separate occasions but a comprehensive water use plan has not been adopted.

However, water resources planning has not been lacking. In 1979, DEP offered for public comment a "state water use plan" based upon individual water management plans developed by the WMDs. However, that plan was never formally "adopted" as called for in Chapter 373, F. S., and DEP instead attempted to guide water resources planning through adoption of a "state water policy" by rule (Chapter 17-40 now Chapter 62-40, Florida Administrative Code). DEP recently completed the Florida Water Plan, incorporating some requirements of the State Water Use Plan. The Florida Water Plan is based largely upon the WMD water management plans. These plans are the result of a five-year planning effort that also has produced needs and sources assessments, designation of water use caution areas, progress towards establishing MFLs, and other water planning initiatives, including development of regional water supply plans by the South Florida WMD.

To date, the WMDs' primary role in regard to water supply development has been to regulate water use pursuant to Part II, Chapter 373, F.S., and, to a lesser extent, to engage in water supply planning. Section 373.1961, F.S., authorizes, but does not specifically require, the WMDs to engage in a much broader range of water supply activities, including the authority to develop and operate water production and transmission facilities for the purpose of supplying water to counties, municipalities, private utilities, and regional water supply authorities. Generally, the WMDs have not exercised such authority, although the South Florida WMD's operation of the Central and Southern Florida Flood Control Project could be considered a water supply distribution system. The WMDs' role has more typically consisted of water supply planning and technical assistance and, in some cases, financial assistance. For instance, SWFWMD has invested substantial sums of money into water resource development projects through its New Water Source Initiative program, which matches district and basin board ad valorem tax revenues with local and federal dollars. SWFWMD projects spending at least \$398 million by FY 2007.

The PSC regulates privately owned water and wastewater utilities in counties which have ceded regulatory authority to the PSC. Counties which have ceded this authority to the PSC are known as "jurisdictional" counties, and counties which have retained authority to regulate privately owned water and wastewater utilities are known as "non-jurisdictional counties." Currently, 29 counties are non-jurisdictional and 38 are jurisdictional.

The water and wastewater utilities regulated by the PSC frequently find themselves in a position of being required by DEP, the WMDs, or the U.S. Environmental Protection Agency, to construct certain facilities and pollution control devices, and later having to prove to the PSC that these were reasonable and prudent investments. The PSC agrees that when a utility has been required to incur costs in order to comply with

environmental requirements, the utility should be able to recover those costs by passing them on to their customers. In fact, the PSC has taken the position that it has always allowed utilities to recover the compliance costs required by an environmental regulatory agency. However, the conflict appears to arise when a utility incurs costs to meet an environmental standard, but the compliance measure was not specifically ordered by environmental agency. In this situation, utilities have been denied recovery of environmental compliance costs.

The PSC and most interested parties agree that the PSC has the authority under existing law to set conservation rates, and the PSC has set conservation rates in the past. The term "conservation rate" is used to describe rate structures which encourages conservation of water. One of the more common conservation rate structures is the inverted block rate. This rate structure sets rates which increase as water use increases, thus encouraging water conservation through economic incentives. Using a conservation rate structure does not mean that water rates will increase. In fact, it is not uncommon for water bills of users of small amounts of water to decline.

B. EFFECT OF PROPOSED CHANGES:

HB 1339:

- ◆ Directs the PSC to presume correctness or prudence on the part of its regulated water and wastewater utilities when they make an improvement to their facilities in order to comply with a DEP regulation or a WMD requirement to use an alternative source of water or a conservation technique. The utilities would be allowed a reasonable time to recover these environmental compliance costs.
- ◆ Amends existing state water policy to: direct DEP and the WMDs to consider cumulative impacts on water resources; to manage those resources so as to ensure their sustainability; promote the availability of sufficient water for all existing and future reasonable-beneficial uses and the environment through water resource and supply development; and ensure the protection of water resources on state lands.
- ◆ Defines "water resource development" as the formulation and implementation of regional water resource management strategies, including the collection and evaluation of surface water and groundwater data; structural and non-structural programs to protect and management water resources; development of regional water resource implementation programs; the construction, operation and maintenance of major public works facilities to provide flood control, surface and groundwater storage, and groundwater augmentation; and related technical assistance to local governments and to government-owned and privately owned utilities.
- ◆ Defines "water supply development" as the planning, design, construction, operation and maintenance of public or private facilities for water collection, treatment, transmission or distribution for sale, resale or end use.
- ◆ Renames the state water use plan the "Florida Water Plan," and clarifies and broadens the type of information it should contain.

- ◆ Specifies the types of information that should be included in WMD district water management plans, which have a 20-year planning horizon, and how they link to the Florida Water Plan and to regional water supply planning.
- ◆ Directs WMDs to initiate regional water supply planning by October 1, 1997, in areas where they determine sources of water are not adequate over the 20-planning period to supply water for all existing and projected reasonable-beneficial uses, and sustain the natural systems. Beginning November 15, 1997, the WMDs shall annually report to the Governor and the Legislature on their water resource and water supply development projects.
- ◆ Specifies that the proper role of the WMDs is primarily planning and water resource development, but that WMDs are not precluded from providing assistance with water supply development.
- ◆ Specifies that the proper role of local governmental entities, regional water supply authorities, and publicly-owned and privately-owned utilities is water supply development, but they are not precluded from assisting with water resource development.
- ◆ Specifies that, generally, the direct beneficiaries of water supply development projects should pay the costs of the projects from which they benefit, and that water supply development projects should be paid for through local funding sources. However, HB 1339 also directs the state and the WMDs to help finance and provide other types of assistance to water supply projects that are "of greater public good."
- ◆ Directs the WMDs to include in their annual budgets appropriations for water resource development, and the Governor to evaluate whether these appropriations are adequate.
- ◆ Directs the PSC, DEP and the WMDs to coordinate their rule requirements and time frames for cost recovery for water and wastewater utility systems regulated under Chapter 367, F.S.
- ◆ Provides the PSC with explicit authority to set conservation rates.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Section 5 of the bill gives the WMD governing boards the authority to adopt by rule the considerations they would use to determine whether to pursue

water resource and supply development projects -- if they chose to make such determinations final agency action.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The water resources development provisions require the WMDs (and DEP to a lesser extent) to engage in comprehensive water resource planning activities. These activities include planning, research, and construction and maintenance of public works projects. Some WMDs already have programs to develop water resources, such as SWFWMD's New Water Source Initiative.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

Not applicable.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

- (2) what is the cost of such responsibility at the new level/agency?

None.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Not specifically. If the WMDs are required to bear the cost of ensuring water is available for all existing and future reasonable-beneficial uses these costs will be borne by the landowners in the WMDs through ad valorem taxes. The WMDs which do not already levy their maximum ad valorem tax rate have the authority to raise property taxes to pay for these additional costs.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Section 6 of HB 1339 states that "generally, direct beneficiaries of water supply development projects should pay the costs of the projects from which they benefit...." For all practical purposes, this is no change from the current situation of water and wastewater utility customers paying, through rate adjustments, for improvements or expansions to those systems. As mentioned in C.2.a. above, if the WMDs must ensure adequate water exists for all existing and future reasonable-beneficial uses, then they may raise their ad valorem rates to generate the revenue needed to finance such projects. In this case, property owners -- most of whom benefit to some extent -- would be paying for water resource development.

4. Individual Freedom:

Not applicable.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 367.081, F.S., directing the PSC to presume correctness or prudence on the part of a water or wastewater utility that makes an improvement approved by DEP or required by a WMD. Directs the PSC to allow the utility to recover costs associated with such improvements. Allows PSC to set conservation rates.

Section 2: Amends s. 373.016, F.S., related to state water policy. Declares that DEP and the WMDs shall take into account cumulative impacts on water resources and manage those resources in a manner as to ensure sustainability. Promotes the availability of sufficient water for all existing and future reasonable-beneficial uses and the environment, through water resource and water supply development. Declares it is the policy of the state to ensure protection of water resources on state lands.

Section 3: Amends s. 373.019, F.S., to add definitions for "district water management plan;" "Florida water plan;" "regional water supply plan;" "water resource development;" "resource implementation rule;" and "water supply development." Renumbers throughout.

Section 4: Amends s. 373.036, F.S., to rename the "state water use plan" to the "Florida water plan." Revises throughout. Directs DEP, in coordination with the WMDs and others, to develop the Florida Water Plan, which shall include, but not be limited to:

- ▶ DEP's programs and activities related to water supply, water quality, flood protection, floodplain management and natural systems;
- ▶ DEP's water quality standards;
- ▶ the WMDs' water management plans; and the
- ▶ Goals, objectives and guidance for the development and review of programs, rules and plans related to water resources -- which currently is in Chapter 62-40, Florida Administrative Code, as the state water policy rule. This shall be renamed the water resource implementation rule. Amendments to the rule shall be adopted by the DEP secretary and submitted to the Legislature, and shall not become effective until the conclusion of the next regular session of the Legislature following their adoption.

Directs the WMDs to adopt district water management plans for water resources within their regions to address water supply, water quality, flood protection, floodplain management and natural systems. Requires that these plans be based on a 20-year planning horizon, and be developed in cooperation with other governmental entities and interested parties, and be updated every 5 years. Specifies that such plans shall include:

- ▶ Scientific methodologies for establishing MFLs and all established MFLs;
- ▶ Identification of one or more water supply planning regions;
- ▶ Technological data and information prepared for local governments' comprehensive plan amendments and for groundwater basin resource availability studies;
- ▶ Districtwide water supply assessment, to be completed no later than July 1, 1998, that determines each water supply planning region;

- ▶ Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water or all existing legal uses and reasonably expected future uses;
- ▶ Existing legal uses, reasonably anticipated future needs, and reasonably anticipated sources of water and conservation efforts; and
- ▶ Any completed regional water supply plans.

Directs WMD governing boards to adopt by rule or order relevant portions of the district water management plans. Directs governing boards to join with DEP in considering the requirements of public recreation and protection of wildlife and fish, when formulating these plans. Gives WMDs, not DEP, the authority to designate certain uses on waterbodies as desirable or undesirable because of their impacts.

Section 5: Creates s. 373.0361, F.S., related to regional water supply planning. Directs each WMD governing board by October 1, 1998, to initiate water supply planning in regions identified in the district water management plan, where it has been determined that sources of water are not adequate for the 20-year planning period to supply water for all the existing and projected reasonable-beneficial uses and to sustain the natural systems. Provides for planning to be a public process. Specifies that each regional water supply plans shall include, but not be limited to:

- ▶ A water supply development component that includes a quantification of water supply needs for all existing and reasonably projected future uses within the planning horizon; a list of water source options; estimated costs and funding for each option; and a list of water supply development projects determined to be of the greater public good.
- ▶ A water resources development component that includes a listing of water resource development project that support water supply development; an estimate of the amount of water that would be made available through the project; the timetable for implementing the projects; the costs of the project; and who will implement the project.
- ▶ Consideration of how the options address the public interest or save money overall by preventing loss of natural resources or avoiding greater future costs;
- ▶ Technical and scientific data; and
- ▶ The MFLs that have been established in the region.

Directs WMDs, beginning November 15, 1997, to submit an annual report to the Governor and the Legislature that explains the status of regional water supply planning in each district. Specifies content of the annual reports.

Section 6: Creates s. 373.038, F.S., related to water resource and water supply development. States that the proper role of the WMDs is primarily planning and water resource development, but this does not preclude the WMDs from assisting in water supply development. Finds that the proper role of local governments, regional water supply authorities, and government-owned and privately owned utilities is water supply

planning, but this does not preclude them from assisting with water resource development. Specifies that water resource and supply development must be a priority, where needed, to increase the availability of sufficient water for all existing and future reasonable-beneficial uses and the environment. Further clarifies roles of WMDs, local governments, and other entities in water resource and water supply development. Directs WMDs to include in their annual budgets funding for water resource development. Defines water supply projects that are of the "greater public good," and declares such projects eligible for state and WMD funding.

Section 7: Amends s. 373.046, F.S., related to interagency agreements. Allows WMDs to establish "single affected districts" where projects or local government boundaries cross WMD lines.

Section 8: Amends s. 373.536, F.S. to provide notice provisions for WMD budget hearings. Requires WMDs to specifically identify administrative and operating expenses in the budget, and how they allocated for these activities and programs in proportion to the time, personnel, and resources devoted to them. Requires the WMDs to submit by August 1 of each year a tentative budget to the Governor, the Speaker of the House, the President of the Senate, the chairs of the legislative committees with substantive or appropriations jurisdiction, the secretary of DEP, and each county in which it has jurisdiction.

Section 9: Amends s. 186.007, F.S., to correct a cross-reference.

Section 10: Amends s. 186.009, F.S., to correct a cross-reference.

Section 11: Amends s. 373.103, F.S., to correct a cross-reference.

Section 12: Amends s. 373.114, F.S., to correct a cross-reference.

Section 13: Amends s. 373.418, F.S., to correct a cross-reference.

Section 14: Amends s. 373.456, F.S., to correct a cross-reference.

Section 15: Amends s. 403.031, F.S., to correct a cross-reference.

Section 16: Amends s. 403.0891, F.S., to correct a cross reference.

Section 17: Directs the PSC, the DEP and the WMDs to coordinate their rule requirements and time frames for cost recovery for water and wastewater systems regulated under Chapter 367, F.S.

Section 18: Repeals subsection (10) of s. 373.026, s. 373.039, and subsection (33) of s. 403.061, F.S.

Section 19: Provides that this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. HB 1339 indicates that water supply development projects that are of "greater public good" would be eligible for state funding. It does not specify the source of the funding or from which state agency budget this funding would be made available.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate, but likely substantial. The water resource development component of HB 1334 could have a significant recurring fiscal impact on WMD budgets. In addition, water supply projects that meet a "greater public good" would be eligible for WMD funding. The bill does not specify the source of the funding for either of these activities.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. Based on the extent of the WMDs' involvement in water resource development and certain water supply development projects, the costs would be borne by the landowners in the WMDs through increased ad valorem taxes. The WMDs which do not already levy their maximum ad valorem tax rate may raise property taxes to help pay for these projects.

There also will likely be costs associated with the water and wastewater utilities being allowed to include in their rate bases the expenses associated with meeting environmental compliance measures. These costs are indeterminate, but PSC staff indicates that while consumers may see higher utility bills in the short term, their bills will decline in the long run due to utilities achieving an economy of scale in their construction.

2. Direct Private Sector Benefits:

Indeterminate. There would be long-term benefits associated with the success of water resource development projects, which in turn would make available more water for all consumers and the environment.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of HB 1339 because the bill does not require cities and counties to expend funds, or to take actions that require the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

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